

Initial Meeting Minutes

Richard Sanders of the Transportation Safety Institute (TSI), who is leading the current effort by the Office of Pipeline Safety (OPS) on Operator Qualification, opened the meeting by explaining the “rules of conduct” for the day, as well as how “parking lot” issues would be summarized and exhibited on the side screen by Sharon Webb (TSI). Mr. Sanders informed the audience that a summary of the meeting would subsequently be available online. Mr. Sanders’ slides are posted on the meeting web site.

Stacey Gerard, Associate Administrator for Pipeline Safety in the Research and Special Programs Administration (RSPA) in the Department of Transportation (DOT), spoke next. Ms. Gerard began by polling the audience as to their backgrounds, in order to better understand the needs of the participants. Industry, states and federal regulators were all well represented. Ms. Gerard explained that the goal of OPS is enlightened regulation.

Ms. Gerard further explained that the OQ rule, and this particular public workshop, were an outgrowth of the recognition of the recurring problem of avoidable operator error. While Ms. Gerard recognized the improvements of industry with respect to this issue, she confirmed that “we have further to go” in assuring that those individuals performing “covered” tasks are fully qualified to do so.

History of the 1999 OQ rule

Ms. Gerard noted a different regulatory environment existed when the OQ rule was developed. OPS, at that time, was accused of the “absence of a proactive regulatory environment” and of leaving its stakeholders without the assurance that “OPS was in charge.” At the present time OPS’ efforts have begun to reap rewards. NTSB recently noted, that OPS “has been dedicated to correcting that environment” and has “tested ways to improve regulation and inspection...[OPS] learned [they] had to address the management of systems.” Both the National Transportation Safety Board (NTSB) and the General Accounting Office (GAO) have recognized OPS recent achievements in the area of regulatory improvement.

Ms. Gerard explained that OPS recently refocused on the intent of the 1999 OQ rule, and has worked to make the rule effective in today’s environment. In summary, the 1999 OQ rule was initially described as a performance based rule, but one without any performance measures. To improve the workability of this rule, OPS is treating the 1999 OQ rule as a management-based rule, one that addresses managing the qualification of pipeline personnel.

Such a management-based approach creates flexibility in how operators are allowed to satisfy the requirements of the rule. Ms. Gerard explained the danger in waiting for years of “trend data” in order to validate effectiveness based on performance trends. Instead,

she explained, a more prescriptive approach combined with evaluation of operator processes used to satisfy the intent of the rule is more appropriate at this time.

The protocols recently developed in support of the OQ rule are intended to accomplish just this: to increase the uniformity of OQ programs without OPS dictates on how to achieve these results.

Lastly, Ms. Gerard noted that the Pipeline Safety Law, passed by Congress on December 17, 2002, gave OPS only a one-year window to implement many new rules, including more stringent OQ requirements. Ms. Gerard noted that OPS intends to comply with these new requirements by June 2003. In support of the more rigorous OQ requirements, OPS intends to develop collaboratively with industry criteria, examples of practices that satisfy the intent of the rule, and supplemental inspection guidance.

OPS inspectors will ensure that prescriptive aspects of the OQ rule have been satisfied and that the operator's plans and commitments are achievable.

Ms. Gerard also introduced a new OPS compliance tool titled NARI (Notice of Areas of Recommended Improvement). Ms. Gerard stressed that NARI would be used for compliance purposes only, not as an enforcement action (e.g., such as a NOPV - Notice of Probable Violation). While operators will certainly need sufficient time to comply with the OQ rule, NARI will be used a tool by OPS to inform operators where their compliance plans or progress appear to be insufficient. Ms. Gerard emphasized that OPS will not immediately be inspecting for full compliance with the OQ rule, but rather evidence that the operators are using solid plans and strategic approaches to comply and develop a sufficient set of OQ practices. One caveat: if an operator fails to demonstrate either the willingness or ability to comply with the intent of the rule, it is likely that OPS will issue an NOA (Notice of Amendment), or a NOPV.

Ms. Gerard also noted that the new law mandates that OPS develop a rule requiring operators to notify OPS of any significant changes to their OQ plan.

The rule requires that, following an incident or accident, an operator determine whether an individual has contributed to the event by performance of a covered task. An operator improvement plan could include a commitment to develop an enhanced approach to identifying such individuals. The program could also be expanded to evaluate the causes of "near misses." Ms. Gerard noted that OPS would be grateful for other suggestions of acceptable operator approaches to attaining compliance from its many stakeholders.

OPS' goal is to continue to promulgate "enlightened regulation." One issue that lingers, however, unaddressed by this rule, is the issue of new construction. OPS is considering supplemental rulemaking to address this issue. Ms. Gerard's slides and remarks are posted on the meeting web site.

Richard Sanders: Status and Direction of the Inspection Process

Mr. Sanders briefly noted that the purpose of today's meeting is to clarify regulatory expectations and to identify noteworthy programs/efforts. Mr. Sanders' slides are posted on the meeting web site.

Andy Drake, Duke Energy

Mr. Drake noted that OPS, the industry, and stakeholders all have the same goal: ensuring the proper qualification of those individuals performing "covered" tasks. However, Mr. Drake noted industry concern that the protocols currently under development by OPS may exceed the scope of the rule.

Further, Mr. Drake stated that what is needed is reinforcement of the performance-based approach such as by OPS providing conservative, clear criteria, and operators wishing relief from these criteria to undertake a performance-based approach to justify different criteria. Mr. Drake raised the concern that, if the protocols exceeded the scope of the rule, that the rule itself might need to be revisited (e.g., another rulemaking undertaken).

Mr. Drake agreed with Ms. Gerard that an interim/transitional approach to implementation of the rule is the correct approach, but expressed concern that the NARI might not be the right compliance tool to accomplish this goal. . Mr. Drake's slides are posted on the meeting web site.

NTSB Perspective

As NTSB was unable to send its senior representatives to this meeting, Stacey Gerard read pre-prepared remarks from Bob Chipkowitz.

NTSB's position is that OPS' work is still insufficient with respect to the qualification of operational personnel. NTSB is not advocating revisiting the OQ rule, yet Ms. Gerard indicated a willingness to consider this approach if necessary.

Ms. Gerard noted that OPS needs to remove the "black mark" from the NTSB regarding the OQ rule. She anticipates that the protocols currently under development will accomplish this goal.

Warren Miller, Office of Pipeline Safety, Central Region

Mr. Miller noted that 16 operators have participated in OQ data gathering. Mr. Miller noted that welding and fusion were often excluded from the OQ program. Mr. Miller also expressed concern over the fact that many OQ plans simply restated OQ requirements rather than offering guidance for a task-specific practices. Mr. Miller's slides are available of the meeting web site.

Bob Leonberger, State of Missouri, NAPSRS Perspective

Mr. Leonberger, as a past president of NAPSRS, reiterated NAPSRS's involvement in, and commitment to, the OQ rule as developed as a result of the 1999 rulemaking.

Ron Weist, State of Minnesota, NARUC Perspective

Mr. Weist reminded the audience that the OQ rule, as developed under the 1999 negotiated rulemaking process, was believed to be a "living document." Thus, the change in approach to implementation is consistent with its original intent. Mr. Weist supports the development of the current protocols as a means of providing consistent inspection criteria. He offered NAPSRS's support in this the development of the protocols.

Morning Q&A Session

Question: (Cesar DeLeon): It sounds like the OQ rule will be enforced based on the protocol. These protocols have not yet been commented upon by the industry. This is not the right approach. If necessary, rework the OQ rule.

Answer: (Stacey Gerard): We are here today to speak with you about the guidance we are giving our inspectors. The criteria in the protocols are the methods required under the Pipeline Safety Act. "Protocols" is simply a different word for "standards" required by the new law. This is not a change to the rule. Protocols are simply a means to prepare our inspectors, and to ensure consistent inspections. However, we will consider revisiting the OQ rule if that is ultimately deemed necessary.

Panel Discussions

The afternoon sessions began with panel discussions. Each of 13 issues was raised in turn. For each issue, federal, state, and industry representatives provided their perspective. These issues are summarized in the slides included on the meeting web site.

Issue #1: Scope of OQ Inspections

Should inspections go beyond evaluation of compliance with the prescriptive requirements of the rule?

Paul Wood, Cyclo/OPS: The regulations can't wait for performance trends to demonstrate success. Inspections, therefore, must include evaluation of the operator's proposed compliance approach. In addition, we must jointly develop "criteria" and "benchmarks" to ensure consistency in application of the rule.

Tom Woosley, State of Tennessee Agreed with Mr. Wood's statements

Industry Comment: We are interested in the development of criteria and the establishment of reasonable parameters.

Issue #2: Evaluation of Knowledge, Skills and Physical Abilities (KSA)

Should evaluation leading to qualification consider KSAs?

Paul Wood, Cyclo/OPS: Yes, although different tasks might be evaluated in different ways. In the short term, OPS will have to accept existing practices, so long as those practices are evolving to those defined by the “benchmarks.”

Ron Weist, State of Minnesota: Mr. Wood’s suggested approach is reinforced by the parameters of the December 17, 2003 Pipeline Safety Act. One other thought: Certain qualification tests, such as those for leak surveys, should include a “hands-on” portion in addition to the existing written exams.

Industry, API Representative: The term “KSA” is acceptable; what is not acceptable is the term “physical capacity.” We would be glad to work with OPS to clarify this and to ensure compliance with relevant laws, such as the American Disability Act (“ADA”).

Issue #3: Reevaluation Intervals

How should reevaluation intervals be supported and justified?

Warren Miller, OPS, Central Region: Such intervals should initially be based on precedents from other agencies. However, we will ultimately need a better means to trend and monitor performance, and the intervals chosen based on those trends. Question: isn’t there already industry-wide error trending of conservatively defined intervals?

Ron Passmore, New York State: In the absence of the data underlying intervals performance based intervals should be used.

Industry, AGA Representative: We are concerned about the use of performance monitoring. Substantive data needs to exist to justify proposed intervals for reevaluation intervals. We propose moving forward to collect such data.

Issue #4: Criteria for Small Operators

Should small operators be subject to the same criteria?

John Haddow, OPS, Western Region: Small operators should generally be subject to the same criteria; however, the actual practices of the small operators are expected to be significantly different. We need to develop benchmarks for both large and small operators.

David Born, State of Texas: What is the definition of a small operator? Small operators should be subject to the same protocols, but the inspection process would obviously be less extensive.

Mike Comstock, APGA: The complexity of the OQ audit will obviously vary between different size organizations.

Issue #5: Direction and Observation of Non-Qualified People

Is guidance needed to support supervisors in determining how many qualified people can be directed and observed by one qualified person?

Lynn Tessner, OPS Southern Region: We need joint development of sample guidance.

David Born, State of Texas: The “span of control” should be part of the guidance material.

Mike Comstock/APGA: We agree with Mr. Born’s comment that more specificity is needed.

Issue #6: Noteworthy Practices

Should regulators play a role in identifying and communicating noteworthy practices?

Warren Miller, OPS Central Region: Yes, it is in everyone’s interest if regulators play a role here, and will aid in improving efficiency and effectiveness in satisfying requirements.

Tom Woosley, State of Tennessee: I have used noteworthy practices in my role as an inspector. Noteworthy practices are not regulation or compliance mechanisms, but rather just suggestions.

Deb Haifleigh, AOPL: We all want to learn from one another, but the industry is concerned about the semantics and do not want these noteworthy practices to become de-facto standards.

Issue #7: New Construction

How should OPS distinguish between maintenance and new construction?

John Haddow, OPS Western Region: New construction is not covered under the OQ rule. Tasks on the right-of-way are covered, although “replacement in kind” (e.g., maintenance) is not covered. We need to jointly agree on the extent of coverage or issue a supplementary rule expanding the coverage.

David Born, State of Texas: My view’s are generally consistent with John’s.

Deb Haifleigh, AOPL: Again, the industry wants a clear definition of construction versus operations. Also, we would like to explore the practicability of a theoretical definition.

Issue #8: Treatment of Emergency Response

Does this rule cover emergency response?

Lynn Tessner, OPS Southern Region: We either need to change the rule or its coverage, but we feel that emergency response is covered under 192/195 of O&M

Ron Wiest, State of Minnesota: In 1999, it seemed reasonable to leave emergency response out of the rulemaking. However, we need agreement at this time as to whether emergency response is (as OPS contends) or is not (as industry contends) covered by the rule.

Mike Comstock, APGA: We are not concerned about the inclusion of emergency response in the rule, per se, but rather about the scope of such coverage. If emergency response is deemed to be part of the OQ rule, this could have implications (and possible delays in decision-making) in the pipeline industry's OQ programs. Also, a point of clarification: do we need to qualify fire-persons?

Issue #9: Additional Covered Tasks

Is pipeline excavation a covered task?

Paul Wood, Cyclo/OPS: Pipeline excavation is a major source of incidents and accidents. We believe that excavation is covered under the OQ rule as an O&M task. We do need to jointly agree on the extent of coverage.

Ron Weist, State of Minnesota: I agree with Mr. Wood's comments. Point of clarification: is it inconsistent if excavation is not a covered task?

Industry Representative: We see this as a damage prevention task.

Issue #10: Extent of Documentation

What OQ records must be developed and maintained by the operator?

Chris McLaren, OPS Southwest Region: There are four types of records noted in the rule. There will be additional records to documents practices and results.

Ron Passmore, State of New York: We believe that documents should include decision-making requirements.

Contractor Representative: Indicated willingness to work with OPS on this issue.

Issue #11: Treatment of Training

Should training be evaluated in the OQ process?

Chris McLaren, OPS, Southwest Region: Although training is not required under the OQ rule, strong training programs are a pre-requisite to successful implementation of, and therefore compliance with the rule.

Corkey Hansen, State of Arizona: Training should be used to determine if the individual has the skill to perform the specific covered task.

Contractor Representative: Training is used to prepare individuals to qualify for specific covered tasks.

Issue #12: Abnormal Operating Conditions (“AOC”)

Should listings of AOCs be dynamic?

Dave Waters, Cyclo/OPS: AOCs that qualified people are able to recognize and react to include generic and task-specific conditions. Developing a complete list of such conditions is not possible. Operators do need to integrate new AOCs (e.g., including near misses) into the set used to qualify individuals.

Tom Woosley, State of Tennessee: The states agree the federal perspective. It is also noted that AOCs can increase or decrease in number over time.

Industry Representative: We need a better definition of “near miss.”

Issue #13: Persons Contributing to Incidents or Accidents

Should operators have documented means to identify covered tasks whose performance may have contributed to incidents or accidents along with the people who performed these tasks?

Dave Waters, Cyclo/OPS: Documentation practices are required under the OQ rule. Existing documentation practices are acceptable in the short-term, but in the longer term mutual agreement must be reached as to the necessary extent of documentation.

Corky Hansen, State of Arizona: The states contend that systemic evaluation should be conducted to prevent future incidents/accidents.

Mike Comstock, APGA: The industry needs further clarification on this issue.

Further remarks by Stacey Gerard

Ms. Gerard noted that the questions thus far, as summarized, all lead to the same question, “how to get from here to there?” Ms. Gerard believes that the means to achieve this is to define more specific OQ criteria and standards.

Ms. Gerard suggested that one approach would be to finalize the protocols shortly and then proceed with development of OQ rule guidance for operators. Furthermore, Ms. Gerard offered to host one public meeting each month (until June 2003) to get the maximum level of feedback from affected stakeholders (e.g., federal and state representatives, the general public, pipeline operators, contractors, etc.). Ms. Gerard polled the audience as to the “workability” of this idea, and upon receiving positive feedback, Ms. Gerard agreed that OPS would set such a schedule and would make such information publicly available via a federal register notice. The Notice would also indicate when each element of the OQ rule would be addressed. Lastly, upon conclusion of such meetings, OPS would create additional guidance to “amplify” the protocols.

Ms. Gerard also offered some additional clarification on issues raised in this public meeting. One question had been asked as to whether use of the word “eliminate,” with respect to operator errors, was asking for a true elimination or simply what was strategically achievable. Ms. Gerard stated that it is DOT policy to strive for full elimination of incidents and accidents.

Other questions raised to which no response was presented at the meeting include:
Why is today the first day these issues are being raised ?
What are the performance measures to judge effectiveness of an OQ program?
If one uses a performance-based approach and has an accident, what happens?
Do states have to use protocols?
Should the rule be revisited?
Does OPS expect the protocols to continue to expand the scope of the inspection process?

NARI clarification

Linda Daugherty with the OPS clarified a question regarding NARI vs. Letters of Concern. Ms. Daugherty explained that NARI provides OPS with a non-enforcement means for the inspectors to communicate potential problems to the industry. She further explained that Letters of Concern were instead used to indicate a possible area of noncompliance or good practices undertaken by a specific company/operator. NARI is better suited to the sort of systemic management issues that will not undergo such rapid change (e.g., improvement of an entire OQ programmatic approach).

Afternoon Q&A Session

Question: We all understand the need to qualify individuals who perform covered tasks. Does this mean that OPS expects us (operators) to maintain detailed records of who performs what task, for how long, etc?

Answer (Deb Haifleigh, AOPL): We need to work out the extent of documentation issue, as we discussed earlier.

Answer (Paul Wood, Cyclo/OPS): The provisions under the current rule, at least for some tasks, mandate that operators must document which individuals performed those tasks. However, OPS does not want this requirement to become unnecessarily burdensome.

Answer (Byron Ables): This as an evolutionary process. We don't have all the mechanisms in place yet to track such tasks.

Question: How does this relate to offshore pipelines, if at all?

Answer (Richard Sanders, TSI): We're not aware of anything that exempts offshore pipelines, so long as they are jurisdictional.

Question: There is concern that existing Work Management and QA/QC efforts will be tied into OQ programs. For example, will OQ audits be driven by the Work Management program?

Answer (Warren Miller, OPS): If you wish to tie your OQ audit to your work management program, you will obviously need to document it properly. With respect to QA/QC, these processes are tools to document why, for example, your intervals might be longer than those of another operator.

Answer (Richard Sanders, TSI): The regulation only pertains to OQ. You want to do QA/QC for the right reasons, not simply to satisfy OQ requirements.

Question : We're a contractor company. How can contractor companies get involved? We rarely have the opportunity to state our problems or concerns.

Answer (Stacey Gerard, OPS): Does our suggested public meeting structure work for you? If so, please make sure we have your contact information as well.

Answer (Richard Sanders, TSI): While we have an "open door policy," we don't have jurisdiction over contractors. We have to work with the operators that we regulate to ensure that they are bringing all relevant stakeholders, such as contractors, to the table.

Answer (Industry): We have attempted to include the contractor associations as much as possible, but we will expand our efforts.

Question (Linda Daugherty, OPS): How are companies going to evaluate, through performance measures, that their company OQ program is effective, and at what point might you determine if it was not effective?

Answer (Deb Haifleigh, AOPL): We don't have a simple answer to that yet. The evaluation process is fairly subjective right now.

Question: The Pipeline Safety Act mandates that DOT develop "standards," which OPS has never had to do before. Furthermore, we are uncomfortable with this new term, "protocols." Can't you use the term "inspector standards" and let an industry association such as GPTC develop industry "standards."

Answer (Deb Haifleigh, AOPL): No, GPTC does not develop consensus standards.

Answer (Stacey Gerard, OPS): There was extensive debate among Congressional staff during the writing of the Pipeline Safety Act. The “standards” they are requesting is what they believe to be the only term available to them. However, with respect to other “semantic” issues, let’s try to resolve some of that while we are together today.

Question (U.S. Association of Plumbers & Pipe fitters): Please be sure to include organized labor in this OQ process.

Answer (Stacey Gerard, OPS): Organized labor was involved in the 1999 rulemaking. Can we reach out to you as well to get you involved?

Answer (Industry): We included union contractors in development of INGAA’s OQ plan.

Question (John Clayton/SW Gas): There is concern that the protocols do exceed rule regulations. As we go through this collaborative effort, will we be able to revise the protocols and/or the rule itself?

Answer (Warren Miller, OPS): The protocols are simply guidance for the inspectors, not requirements for industry. The main protocol question with respect to each part is what we need to verify as inspectors. Anything other than that is simply a search for verification of the “top” question (e.g., what the Part requires).

Question: I have concerns regarding Protocol 8.02: Mergers and Acquisitions (“M&A”). The basis for this protocol is that there is a written qualification program. How does this affect M&A?

Answer (Warren Miller, OPS): If you acquire a company, do you accept their qualification of their personnel or do you re-qualify them yourselves?

Question: I have concerns regarding Protocol 6.01: Program Improvement. As long as we meet the requirement of an inspection, why do we have to gauge the performance of a program? This suggests that a minimum standard is acceptable at first, but then we have to go “above and beyond.”

[No answer provided at this time, the issue was noted]

Question: I have concerns regarding Protocol 5.01: Personnel Performance Monitoring. We already do this. However, the new protocol requirements are relatively unclear. What do they mean?

Answer (Paul Wood, Cyclo/OPS): We are working with industry to develop specific criteria to address your concerns.

Question: I have concerns regarding Protocol 2.02. Does this mean that operators’ employees and contractors’ employees must be evaluated in the same way?

[No answer provided at this time, the issue was noted]

Additional Comments from the Panel

Andy Drake, Duke Energy: With respect to revisiting the rule, we are open to revisiting the rule after we get through this working process, if we feel that we still need to do so.

Stacey Gerard, OPS: We need more definitive details on what operators need in order to begin evaluation. Let's go back to the 13 issues discussed earlier and get input on each of those issues and a sense of priority. Then OPS will publish a schedule to get a cross-representative team available at each meeting.

Prioritization of the 13 issues

High Priority:

Scope of OQ Inspections
Evaluation of KSAs
Reevaluation Intervals
Maintenance v. New Construction
Treatment of Emergency Response

Medium:

Abnormal Operating Conditions
Additional Covered Tasks
Extent of Documentation
Treatment of Training

Low:

Criteria for Small Operators
Direction/Observation of Non-Qualified People
Noteworthy Practices
Persons Contributing to Incidents or Accidents

Detailed Comments on Each of the 13 Issues

Scope of OQ Inspections:

Industry Commenter: Keep the focus on "this is a good job" rather than "this is a good way to manage a job." Make sure that the benchmarks pertain to the job being performed rather than the management of the job being performed.

Industry Commenter: Check with industry. I believe that industry has already developed statistical data analysis and industry performance trends. Industry might be willing to donate such information to this effort if it was done on an anonymous basis.

Industry Commenter: We have concern about the use of criteria for "anticipated effectiveness." (Stacey Gerard responded that this term means "a basis on which you judge that this is likely to be successful.")

Industry Commenter: We need to define all the problematic words being raised. I am also concerned regarding the implications of what might be a NARI versus an NOPV, etc.

Evaluation of KSAs:

Industry: We are concerned that raising issues of physical capacity might be infringing on Americans with Disabilities Act and Human Resources issues.

Deb Haifleigh, AOPL: Industry is all over the board on what they think it will take to satisfy the regulators on this issue.

Reevaluation Intervals:

We need further discussion as to the type of data that OPS is looking for.

How do we separate this out from training?

The issue of monitoring individuals in the field would create a paperwork nightmare in terms of documentation (and OQ is meant to qualify people, not monitor them).

Monitoring should not be a part of this effort.

We already have a requirement to track who performs what task when something goes wrong, under the drug and alcohol testing program. Why do we need to address this again here?

Why are reevaluation frequencies that don't match each other preferable?

It is fine to adopt policies from other agencies as appropriate, but don't imply it necessarily applies here.

What is the impact of this on contractors? Will they have to be qualified "on the lowest" frequency of any organization they work for?

Maintenance v. New Construction:

It seems at odds to say that tasks performed on the right-of-way (ROW) are covered but new construction is not. A ROW certainly exists on any new construction effort.

Performance monitoring is magnified with respect to new construction.

Treatment of Emergency Response:

We see no reason to include this. The preamble to the 1999 rule clearly states that emergency response ("ER") is not covered. And ER does not pass the 4-part test anyway. An alternative: We already have to train individuals to respond to AOCs. Look at that training as their qualification.

Yes, but in an emergency we still have to send qualified people out there.

Consider identifying who the emergency responders are. However, given the earlier comments about ER's explicit exemption in the preamble to the 1999 rule, it is not appropriate here.

If I conduct a routine O&M task, my people must be included, but if I just had an emergency I can use unqualified people? It doesn't make sense. Almost every utility has an ER plan, for which they report to the state commission. Are you therefore creating a state/federal guideline conflict?